raise rates in the following rate period above the levels that would otherwise be permitted by the price caps formulas.[290]

155. Carriers that remain subject to ROR set their interstate access rates to recover the costs allocated to the various access categories and elements, plus a prescribed return on investment, currently 11.25%.[291] Some carriers file rates based on their own costs, some participate in pooled rates, and some use an average cost schedule. There is also an optional incentive plan that permits medium-sized LECs to change prices according to established banding limits.[292]

156. The Second Report and Order. In the Second Report and Order, the Commission stated that: (a) existing safeguards (as described above) designed to prevent improper cross-subsidies would apply to LEC provision of video dialtone service; (b) it would closely monitor these rules as applied to specific video dialtone proposals; and (c) it would impose additional safeguards if necessary.[293] The Commission also determined that changes in Parts 36 and 69 would better be addressed in the context of a comprehensive review of those rules rather than in a proceeding focused solely on video dialtone.[294]

a. Overview

Pleadings

157. Several petitioners and the Joint Petition argue that existing safeguards against cross-subsidy are inadequate and request that the Commission adopt safeguards specifically designed for video dialtone service offerings prior to service

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290 Carriers making the low end adjustment are permitted to raise rates sufficiently to target earnings to 10.25% in the following year. Id. at 6801-02.

291 Represcribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers, 5 FCC Rcd 7507 (1990), recon. den., 6 FCC Rcd 7195 (1991), aff'd, Illinois Bell Telephone Co. v. FCC, 988 F.2d 1254 (D.C. Cir. 1993).

292 See 47 C.F.R. § 61.50. One LEC, Cincinnati Bell Telephone Company, has elected this plan. See Cincinnati Bell Telephone Company Revisions to Tariffs F.C.C. Nos. 35 and 40, Transmittal No. 636, 9 FCC Rcd 353 (Com. Car. Bur. 1994).

293 Second Report and Order, 7 FCC Rcd at 5827-30, 5840, paras. 89-93, 116-17.

294 Id. at 5840, para. 116.

authorization.[295] The Joint Petition argues that, because of the high cost of deploying a ubiquitous fiber optic network, any misallocation of costs to basic telephone services could have a large impact on monopoly ratepayers.[296] According to the study attached to the Joint Petition, $100-$200 billion is a reasonable estimate of nationwide broadband investment costs. As evidence of the potential for unjustified basic telephone service rate increases, the Joint Petition cites a 1992 study that concluded that a particular proposal for accelerated deployment of a fiber-to-the-home architecture in Pennsylvania would have caused revenue requirements per access line in that state to increase by $20 per month.[297] Joint petitioners and others contend that separate video dialtone accounts, new cost allocation and jurisdictional separations rules, access elements and a price caps basket must all be established before video dialtone can be offered.[298]

158. Several parties oppose reliance on incremental costing to determine video dialtone pricing issues, and disagree with LECs contending that video dialtone only involves incremental costs.[299] They argue that LEC fiber deployment is intended to carry both voice and video services and that some portion of the costs of that joint and common investment should be allocated to video dialtone.[300] The parties request that the Commission either adopt a fully distributed costing methodology or modify its existing incremental costing methodology to include joint and common costs.[301]

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295 See, e.g., CFA/CME Petition at 24-32; PaPUC Petition at 2, 7-13; NCTA Petition at 3, 11-12; Joint Petition at 1, 5-10.

296 Hatfield Study at 28-29.

297 Jt. Petition at 3, 14; Hatfield Study at 2, 30, citing Page Montgomery, Accelerated Broadband Networks: The Costs and Risks, February, 1992, p.29.

298 See, e.g., DCPSC Petition at 2-6; Joint Petition at 5-10; NARUC Petition at 11-12; PaPUC Petition at 7-13; NCTA Petition at 7-9; see also CCTA Comments at 14.

299 See, e.g., Hatfield Study at 8-9, 22-23 attached to the Joint Petition); AT&T Jt. Pet. Comments at 8; CFA/NCTA Jt. Pet. Reply Comments at 12.

300 See, e.g., Hatfield Study at 8-9, 22-23.

301 See, e.g., Hatfield Study at 22-23; AT&T Jt. Pet. Comments at 8; Economics and Technology, Inc. (ETI) Study at 6-8 (attached to the NJCTA Jt. Pet. Comments). See infra paras. 214-221.

159. Parties opposing the petitions and the Joint Petition argue that existing safeguards sufficiently protect against anticompetitive behavior.[302] They contend that the Joint Petition does not raise arguments that have not already been considered and rejected in the Second Report and Order.[303] They also argue that requests for rule changes are premature given video dialtone's evolving nature.[304] Moreover, some parties argue that regulation is unnecessary because LECs offering video dialtone have no market power as new entrants competing against established video monopolies.[305] Finally, BellSouth argues that the Commission has already rejected the use of fully distributed costing for pricing regulated services of price cap carriers.[306]

160. Several parties also urge that, if the Commission decides to address these issues, it should do so as part of a comprehensive proceeding that is not limited to an analysis of video dialtone service.[307] Some parties state that such a proceeding should not delay video dialtone deployment.[308] Other parties request that the Commission's inquiry focus on the convergence of cable and telephone technologies and that it should apply the resulting rules equally to both cable companies and the LECs.[309]

Discussion

161. We conclude that initial video dialtone service offerings by LECs subject to price cap regulation should be subject

302 See, e.g., Bell Atlantic Comments at 6-8; GTE Comments at 6-8; Ameritech Reply Comments at 5; USTA Jt. Pet. Comments at 6-9.

303 See, e.g., OPASTCO Jt. Pet. Reply Comments at 3-4; GTE Jt. Pet. Comments at 3-9; Broadband Jt. Pet. Reply Comments at 3-4.

304 See, e.g., GTE Comments at 7-8; SNET Jt. Pet. Comments at 11; USTA Jt. Pet. Comments at 8-9; TIA Jt. Pet. Comments at 5-6.

305 See, e.g., SWBT Petition at 3-5; U.S. West Jt. Pet. Comments at 4-6. See infra para. 203; see also infra para. 205.

306 BellSouth Jt. Pet. Comments at 10.

307 See, e.g., OPASTCO Jt. Pet. Reply Comments at 5; BellSouth Jt. Pet. Comments at 2-3; PacTel Jt. Pet. Comments at 5-6; GTE Comments at 7.

308 See, e.g., PaOCA Comments at 11; BellSouth Comments at 7-9; NYNEX Comments at 5 n.9; Broadband Jt. Pet. Reply Comments at 3-4.

309 See, e.g., GTE Jt. Pet. Reply Comments at 6-8; Bell Atlantic Jt. Pet. Comments at 12-15; NASUCA Jt. Pet. Comments at 11.

to the existing price cap rules. Proceeding under existing price cap rules is consistent with eliminating regulatory barriers and distorted incentives to efficient investment in telecommunications facilities, thereby serving our goals of increasing video services competition and investment in telecommunications infrastructure, and promoting greater diversity of video programming. We also conclude that these rules, as further delineated below, should protect telephone ratepayers from improperly subsidizing video dialtone service.

162. As Joint Petitioners point out, LECs, along with other telecommunications providers, may, over time, invest billions of dollars to build a modern telecommunications infrastructure. We share their concern regarding possible effects of video dialtone investment on basic regulated telephone rates, and possible anticompetitive results with respect to cable television service and other multichannel video programming distributors. We are committed to implementing video dialtone in a manner that does not subject basic telephone ratepayers to unreasonable rate increases or allow improper cross-subsidization. We do not, however, agree that ratepayer protection requires that this Commission adopt comprehensive, video dialtone-specific accounting and cost allocation rules before authorizing video dialtone services.

163. Contrary to the arguments of the Joint Petitioners, this Commission's actions in authorizing interstate video dialtone services will not require increases in telephone rates on the order of $20 per month to pay for the cost of a nationwide fiber-to-the-home network. No LEC Section 214 application for video dialtone service has proposed a fiber-to-the-home architecture, and it appears unlikely based on the record that anyone will. In addition, where integrated networks are proposed, much of the investment will be used in the provision of intrastate telephone services, and will require the necessary state regulatory approvals.[310] We also note that investment in video dialtone will,

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310 In New Jersey, for example, the Board of Regulatory Commissioners, acting pursuant to state legislation authorizing alternative forms of regulation for LECs, has approved a plan under which Bell Atlantic-New Jersey is to accelerate construction of an advanced broadband network that includes video dialtone capability. As part of this plan, basic residential telephone service rates are frozen through 1999. The New Jersey BRC has urged this Commission to expedite authorization of video dialtone applications in New Jersey. See Jt. Pet. Reply Comments of NJBRC at 1-2. Similarly, in Pennsylvania, Chapter 30 of the Public Utility Code, 66 Pa. C.S. §§ 3001-3009, requires accelerated deployment of a broadband network as part of any alternative regulation. The Pennsylvania Public Utility Commission on June 23, 1994, approved a plan under which Bell Atlantic-Pennsylvania is to deploy a statewide broadband network; this plan freezes basic residential and business rates

of necessity, proceed over a period of years, permitting federal and state regulators to monitor the results of the initial deployments and take any actions that might be needed to prevent large amounts of video dialtone investment from being improperly shifted to ratepayers.

164. We decline, however, to adopt technology-specific cost accounting rules. The record in this proceeding demonstrates that such cost accounting rules can be rapidly overtaken by technological or marketplace changes. Joint Petitioners, for example, supported in their pleadings the establishment of accounts to identify loop investment as either copper or fiber. Such accounts, had we adopted them in 1992, would no longer serve the purposes envisioned by their proponents because carriers have since that time developed proposals to incorporate a third transmission medium, coaxial cable, into the loop.

165. While we do not propose to amend Parts 32, 64, 36, and 69 of our rules before authorizing video dialtone services, we find that adjustments are necessary to fit video dialtone into our regulatory program. These adjustments, which will be implemented on a case-by-case basis and do not require further rulemaking at this time, are explained below.

166. We view the price cap regulatory regime, and not the Part 36/Part 69 cost allocation scheme, as our primary means of protecting the telephone customers of price cap LECs from unreasonably high rates. Under price caps, a LEC has no guarantee that it will be able to recover increased costs in telephone rates. Its incentive to "shift" costs from video dialtone to regulated telephone services is thus greatly reduced.[311]

167. In addition, the price cap baskets and service categories limit the extent to which price reductions in one service can be offset by price increases in another. We conclude that a separate price caps basket for video dialtone services may be necessary both to protect interstate telephone ratepayers and to deter anti-competitive pricing of video dialtone services.

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through 1999. See Pennsylvania Public Utility Commission, Opinion and Order in Docket No. P-00930715 (adopted June 23, 1994).

311 In the future, LEC incentives and ability to shift costs and cross-subsidize may be reduced even further by the introduction of competition in the provision of local exchange telephone services.

Therefore, in the Price Caps Performance Review docket,[312] we will seek comment on a proposal to establish that basket.

168. We recognize that LECs under ROR or the optional incentive plan may also wish to develop video dialtone services. Such carriers will bear the burden of demonstrating to us how they will ensure that the costs of video dialtone will not be improperly recovered in the rates charged for other interstate services. They, like the price cap LECs, will also be required to comply with the other safeguards adopted in this Order.

169. We deny requests by parties that seek a comprehensive examination of both jurisdictional separations and access charge rules in this proceeding. As explained above, we believe our existing rules adequately protect consumers against improper cross-subsidy and anti-competitive activity at this time. As video dialtone systems are implemented and we gain more experience with this new service, we can amend our rules if necessary or appropriate to address unanticipated problems or results. We agree that long-term video dialtone cost allocation issues would be a part of any comprehensive review of Parts 36 or 69. We do not think, however, that the public interest would be well served by postponing for consumers the benefits that video dialtone services may offer pending the commencement and completion of such proceedings. Therefore, and for the reasons discussed in more detail below, we reject requests for adoption of video dialtone-specific accounting, cost allocation, separations, and pricing rules prior to granting video dialtone authorizations.[313]

b. Part 32 -- Uniform System of Accounts for Telecommunications Companies

Pleadings

170. The Joint Petition argues that for accounting to have any value as a safeguard against cross-subsidization, voice and

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312 See Price Cap Performance Review for Local Exchange Carriers, Notice of Proposed Rulemaking, 9 FCC Rcd 1687 (1994) (Price Cap Performance Review).

313 Because we deny, for the most part, the Joint Petition for Rulemaking, we do not reach the suggestions of GTE, NASUCA, and others that such a rulemaking focus on the convergence of cable and telephone technologies and on creation of a single set of rules for both industries. Furthermore, the question whether, in light of the different statutory regimes governing cable and telephone, we can and should develop a single set of rules for both industries is beyond the scope of our proceeding on reconsideration in this docket.

video investment must be segregated, either in separate subaccounts or new accounts.[314] Numerous commenters support the Joint Petition and ask the Commission to amend Part 32.[315] Some parties contend that the cost accounting requirements should apply either specifically to broadband services, or should identify investment on the basis of network architecture.[316] AT&T, NTCA, and PacTel state that if the Commission decides to amend Part 32, it should do so for all LEC network costs and not just video dialtone costs.[317]

171. LECs generally defend the adequacy of the current Part 32 rules.[318] They argue that Part 32 is not intended to be a cost accounting system that captures product- or service-specific costs, but rather a functional accounting system that consistently captures core financial data despite rapid technological change.[319] In addition, Ameritech opposes distinguishing between broadband and narrowband networks in the Commission's accounting system because in the future integrated voice, data, and video services will be transmitted on the same network.[320]

Discussion

172. We reject the parties' requests that we amend our accounting rules to require carriers providing video dialtone to segregate all video plant investment in new Part 32 accounts or separate subaccounts. Part 32 accounting rules were designed to create a stable basic account structure that would not require modifications as technologies, services, or reporting requirements change. As Part 32 specifically states, "because of the variety and continual changing of various cost allocation mechanisms, the

314 Joint Petition at 17, Hatfield Study at 24-25.

315 See, e.g., AT&T Jt. Pet. Comments at 7-9; NASUCA Jt. Pet. Comments at 10-11; DCPSC Jt. Pet. Comments at 4; NJCTA Jt. Pet. Reply Comments at 1-3; Indiana/Michigan Jt. Pet. Comments at 2.

316 See, e.g., CompuServe Jt. Pet. Reply Comments at 4-5; NASUCA Jt. Pet. Comments at 10-11.

317 AT&T Jt. Pet. Comments at 8; PacTel Jt. Pet. Reply Comments at 7-8; NTCA Comments at 3.

318 See, e.g., Ameritech Jt. Pet. Comments at 6-7; PacTel Jt. Pet. Reply Comments at 7-8; NYNEX Jt. Pet. Comments at 9; US West Jt. Pet. Comments at 13-14.

319 See, e.g., BellSouth Jt. Pet. Comments at 10-12; PacTel Jt. Pet. Reply Comments at 7-8; SNET Jt. Pet. Comments at 7-8.

320 Ameritech Jt. Pet. Comments at 6-9.

financial accounts of a company should not reflect an *a priori* allocation of revenues, investments or expenses to products or services, jurisdictions or organizational structures."[321] Thus we conclude that, as a general matter, it is inconsistent with the nature and purpose of the USOA to create new accounts just because a carrier is offering a new service.

173. We further conclude that, in the case of video dialtone, our regulatory information needs can be satisfied without making permanent changes to the accounting system at this time. Because it would help our monitoring effort and tariff review process to have a record of LEC video dialtone costs, we hereby require that LECs offering video dialtone identify all video dialtone costs by establishing two sets of subsidiary accounting records: one to capture the revenues, investments and expenses wholly dedicated to video dialtone, the other to capture any revenues, investments and expenses that are shared between video dialtone and the provision of other services.[322] These accounting records will also assist state regulators in assuring that video dialtone costs are not improperly included in local rates. LECs authorized to provide video dialtone must file a summary of these subsidiary records with the Commission on a quarterly basis. All video dialtone Section 214 authorizations will be conditioned upon compliance with this requirement.[323] We delegate to the Chief, Common Carrier Bureau, the authority to determine the content and format of the subsidiary accounting records as well as the quarterly reports.

c. Part 64 -- Separation of Regulated and Nonregulated Costs

Pleadings

174. Several petitioners and the Joint Petition claim that the Commission's Part 64 rules are unproven and will not prevent cross-subsidization and other anticompetitive conduct by LECs engaged in the provision of regulated and nonregulated video

321 47 C.F.R. § 32.2(c)(1993).

322 See 47 C.F.R. §32.12(c)(1993). We authorize the Commission's staff to issue Responsible Accounting Officer (RAO) letters, if necessary, in order to ensure uniform accounting treatment of video dialtone costs.

323 In addition, carriers that fail to comply with these requirements are subject to forfeiture under Section 220(d) of the Communications Act.

dialtone services.[324] They also argue that LECs have a history of cross-subsidization and that the Commission lacks the resources needed to provide effective oversight.[325] CFA/CME request that, at a minimum, LEC video dialtone nonregulated activity be conducted through a fully separated subsidiary; or that the scope of permissible nonregulated activities be limited.[326] Pennsylvania Public Utility Commission (PaPUC) claims that the Commission's accounting safeguards are inadequate to detect cross-subsidies because the current rules do not contemplate the use of joint cable/telephone company facilities.[327] NASUCA argues that current rules would permit carriers to accelerate depreciation on investment used to provide telephone service to generate funds for investment in video delivery facilities, and that it would be unfair for telephone ratepayers to bear the burden of such depreciation changes.[328]

175. The Joint Petition further argues that the LECs' CAMs used to separate regulated and nonregulated costs are inadequate because they fail to separate video from telephone services, and do not earmark the costs of LEC enhanced services offered on the regulated video dialtone platform.[329] It also contends that Part 64 would not prevent investment in video dialtone from being recovered from telephone ratepayers should the service fail, since Part 64's fully distributed costing approach does not assign to video dialtone the higher joint costs of a video dialtone-capable network.[330] Finally, the Joint Petition argues that the Commission has yet to define which enhanced functions would be subject to direct assignment and which would be categorized within the common cost categories.[331]

176. The Joint Petition specifically requests that the Commission mandate CAM modifications to identify and attribute previously-expensed video dialtone items, and that the FCC review

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324 See, e.g., CFA/CME Petition at 25-32; California Petition at 7 n.2; PaPUC Petition at 7-9; Joint Petition at 19-20.

325 See, e.g., CFA/CME Petition at 28-32.

326 CFA/CME Petition at 32.

327 PaPUC Petition at 9.

328 NASUCA Jt. Pet. Comments at 8.

329 Joint Petition at 19-20; Hatfield Study at 19-20.

330 Hatfield Study at 19-21.

331 Id.; CFA/NCTA Jt. Pet. Reply Comments at 15-17.

such CAMs to ensure that directly assignable video dialtone costs are in fact being directly assigned.[332] Moreover, it asks that the Commission's Automated Reporting and Management Information System (ARMIS) be refined to capture data necessary to enforce cost allocation and accounting rules with respect to video dialtone.[333]

177. LECs argue in opposition that the existing Part 64 rules adequately prevent subsidization of a company's nonregulated business activities.[334] They argue that it is unnecessary to distinguish between video and other enhanced services to prevent improper cross-subsidization.[335] Several LECs maintain that the Joint Petition misunderstands the relationship between Part 32 and Part 64 and does not show how those rules fail to prevent cross-subsidy.[336] Furthermore, Ameritech disputes that ratepayers would bear the burden of unsuccessful LEC video dialtone investments, and argues that the current rules expressly prohibit the reallocation of investment from nonregulated to regulated categories.[337]

178. Ameritech also requests clarification that there is no presumption in favor of structural separation for the LEC provision of video dialtone. It argues that such a presumption would be at odds with the FCC findings that separate subsidiaries are no longer necessary to protect against potential LEC abuses in the provision of enhanced services.[338] NYNEX opposes modifying ARMIS because it believes that current ARMIS reports adequately track video dialtone costs, including the cost of deploying fiber.[339] World Institute argues that the Joint Cost rules can always be strengthened at a later date, if necessary, but opposes the rule changes proposed in

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332 Joint Petition at 20, n.43, Hatfield Study at 27.

333 Joint Petition at 20, n.43. Accord, CompuServe Jt. Pet. Reply Comments at 5; NJCTA Jt. Pet. Comments at 4-7, 11.

334 See, e.g., GTE Comments at 6-7; SNET Jt. Pet. Comments at 11-12; US West Jt. Pet. Comments at 11-13.

335 See, e.g., Ameritech Jt. Pet. Comments at 10-11; NYNEX Jt. Pet. Comments at 9-10.

336 See, e.g., BellSouth Jt. Pet. Comments at 12; NYNEX Jt. Pet. Comments at 10.

337 Ameritech Jt. Pet. Comments at 11.

338 Ameritech Petition at 15-17.

339 NYNEX Jt. Pet. Comments at 15.

the Joint Petition if they provide an insurmountable barrier to the development of a broadband telecommunications network.[340]

Discussion

179. We reject claims that we should amend Part 64 because current rules would not prevent LECs from improperly subsidizing video dialtone nonregulated services. To the contrary, we conclude that existing Part 64 rules do not require modification to prevent such an outcome.

180. The Joint Cost rules set forth in Part 64 were formulated to accommodate new enhanced services offerings in an increasingly competitive telecommunications environment. Part 64, for the most part, does not prescribe cost categories or allocation factors.[341] Rather, each carrier selects, subject to public comment and Commission review, the cost pools and allocators it needs to identify the costs of all of its nonregulated activities. The Commission chose this approach because it believed that the mix of nonregulated activities and the organizational structure would vary widely from carrier to carrier, and that a single, prescribed manual could not adequately encompass the possible variations.[342] No party has shown that video dialtone-related nonregulated products and services will exhibit, initially, less variety than other nonregulated activities, or will be more amenable to uniform treatment. Similarly, parties that object to the aggregation of video dialtone-related nonregulated costs with the costs of other nonregulated activities fail to explain what valid regulatory purpose of this Commission would be served by revisiting our determination in the Joint Cost Order to avoid product-specific cost allocations to nonregulated products and services.[343] We therefore decline to promulgate video dialtone-specific cost allocation rules for nonregulated activities related to video dialtone service at this time.[344] However, we may require uniformity

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340 World Institute Jt. Pet. Comments at 7.

341 The Commission has, after extensive experience with individual carrier practices, established uniform cost pools for some accounts. See Implementation of Further Cost Allocation Uniformity, 8 FCC Rcd 4664 (Com. Car. Bur. 1993).

342 Joint Cost Order, 2 FCC Rcd at 1352 n.225.

343 See Joint Cost Order, 2 FCC Rcd at 1317, paras. 147-48, 151. See also 47 C.F.R. §64.903.

344 Arguments in favor of establishing separate subsidiary requirements for video dialtone-related enhanced services are addressed at paragraph 232, infra.

in the video dialtone cost allocation procedures in the future as we gain experience with video dialtone services and LEC Part 32 subsidiary accounting records.[345]

181. Under our rules, interested parties, as well as the Commission, will have ample opportunity to review the application of Part 64 to video dialtone-related nonregulated offerings. All LECs with $100 million or more in annual operating revenues are required to keep their current Part 64 CAMs on file with this Commission.[346] To assist state regulators and other interested parties in tracking video dialtone-related CAM filings, we hereby require that any LEC receiving authorization to provide video dialtone file CAM amendments within thirty days after the effective date of the Section 214 authorization and at least sixty days prior to providing nonregulated products or services related to video dialtone.[347] Video dialtone-related CAM amendments are subject to public comment and will be closely scrutinized by the Commission. Changes to time reporting procedures, cost apportionment tables, and the affiliate transactions statement can, if necessary, be suspended for up to 180 days, after which the Bureau may either allow the new procedures to become effective or prescribe different procedures.[348]

182. We reject as incorrect claims that our rules would permit LECs to assign video dialtone investment to nonregulated use and then reassign that same investment to regulated use. Investment assigned to nonregulated use may not be reassigned to

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345 See Implementation of Further Cost Allocation Manual Uniformity, 8 FCC Rcd 4664 (Com. Car. Bur. 1993).

346 Id. The Commission's rules require that CAMs describe the carriers' nonregulated activities, list the activities the carriers account for as incidental to regulated services, and provide information on the carriers' affiliate transactions, employee time reporting procedures and cost apportionment methods. Each CAM must show, for each Part 32 account containing costs incurred in providing regulated services, the cost pools to which amounts in the account are assigned, the procedures used to place costs into each cost pool, and the basis on which each cost pool is apportioned between regulated and nonregulated activities. Cost pools are comprised of logical, homogenous groupings of costs that maximize the extent to which cost-causative allocation factors can be used to divide the costs between regulated and nonregulated activities.

347 See 47 C.F.R. §64.903(b)(1993).

348 47 C.F.R. §64.903(b)(1993).

regulated use absent a waiver.[349] Such waivers are granted by the Commission only upon a showing that: (1) the carrier's regulated activities require the use of plant capacity allocated to nonregulated activities; and (2) the carrier cannot obtain the needed capacity elsewhere at lower cost.[350]

d. Part 36 -- Jurisdictional Separations

Pleadings

183. Several petitioners and the Joint Petition request a Federal-State Joint Board to recommend the proper allocation between the state and interstate jurisdictions of plant used jointly to provide telephone and video delivery services.[351] The Joint Petition argues that telephone or video delivery rates cannot be found just and reasonable before this allocation is settled.[352] It asserts that, under the existing allocation rules, video dialtone will increase local basic telephone rates because 75% of any increase in loop costs due to video dialtone will be allocated to the state jurisdiction, but all increases in revenue due to video dialtone will be allocated to the interstate jurisdiction.[353] NYDPS argues that, if video dialtone is an interstate service, then its incremental and common costs should be assigned entirely to the interstate jurisdiction.[354]

184. NARUC asserts that Section 410(c) of the Communications Act legally compels the Commission to refer all separations issues to a Joint Board. NARUC further asserts that other cost allocations issues should also be referred to a Joint Board because Congress intended that States have a voice in cost allocations involving jurisdictionally-mixed facilities.[355] Several parties suggest that the separations issues associated with video dialtone

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349 Joint Cost Order, 2 FCC Rcd at 1320, para. 169.

350 Id. See also, Pacific Bell Reallocation of Nonregulated Investment, 9 FCC Rcd 494 (1994).

351 See, e.g., NARUC Petition at 11-12; PaPUC Petition at 12; Joint Petition at 1, 11-13, 22.

352 Joint Petition at 11.

353 Joint Petition at 11-13, Hatfield Study at 18, 25-26; see also NARUC Jt. Pet. Comments at 6; NJCTA Jt. Pet. Comments at 14-15.

354 NYDPS Jt. Pet. Reply Comments at 3.

355 NARUC Petition at 12; see also Joint Petition at 11; DCPSC Jt. Pet. Comments at 4; California Jt. Pet. Comments at 2.

should be addressed either by the Joint Board established in CC Docket 80-286 or as part of a comprehensive Part 36 and 69 reform proceeding.[356] These parties differ on whether video dialtone services should be authorized prior to the resolution of the separations issues.[357]

185. On the other hand, several commenters oppose the establishment of a Joint Board to address video dialtone separations issues.[358] They deny that there is a jurisdictional mismatch of video dialtone costs and revenues, arguing that the Commission could order assignment of joint facilities based on an appropriate measure of relative use or rely on existing rules, which require the cost of wideband services to be "directly assigned where feasible."[359] Parties also oppose the establishment of a Joint Board because it will slow the implementation of video dialtone; because it is premature; and because these issues would be better addressed in the context of a comprehensive review of jurisdictional separations and access charges, or within the comprehensive review of video dialtone in 1995.[360] PacTel maintains that the Commission should continue to require detailed information as part of the video dialtone Section 214 authorization to help promulgate a comprehensive review of Part 36.[361]

Discussion

186. We decline the parties' requests that we institute at this time Federal-State Joint Board proceedings to amend our Part 36 jurisdictional separations rules for video dialtone service. For the time being, LECs will allocate regulated video dialtone investment and expenses between the state and federal jurisdictions in accordance with existing rules. To ensure that our decisions do not have untoward effects outside of our regulatory jurisdiction, we are directing the Common Carrier Bureau to monitor the impact of

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356 See, e.g., AT&T Jt. Pet. Comments at 7; BellSouth Jt. Pet. Comments at 3, 6-7, 13.

357 See, e.g., Broadband Jt. Pet. Reply Comments at 5-6; NASUCA Jt. Pet. Comments at 2-3.

358 See, e.g., NTCA Jt. Pet. Comments at 2; PacTel Jt. Pet. Comments at 6; SNET Jt. Pet. Comments at 7-8.

359 See, e.g., SNET Jt. Pet. Comments at 7; Bell Atlantic Jt. Pet. Comments at 8; NYNEX Jt. Pet. Comments at 12-13.

360 See, e.g., PacTel Jt. Pet. Reply Comments at 6; NTCA Jt. Pet. Comments at 2-4; SNET Jt. Pet. Comments at 7-8.

361 PacTel Jt. Pet. Reply Comments at 6.

video dialtone on separations results and on intrastate local telephone rates, and to report its findings periodically to this Commission. This course of action will provide us and state regulators with the practical experience and the data necessary to make appropriate decisions concerning the future of the Part 36 rules.

187. Joint Petitioners and others have complained that existing separations rules would assign to the states 75% of increased loop costs attributable to video dialtone, but no video dialtone revenues. As explained in Sec. IV(A)(3) of the instant order, however, we have on further consideration determined that regulated video dialtone services of a purely intrastate nature may be tariffed in the intrastate jurisdiction. The availability of intrastate video dialtone revenues should help offset any increase in intrastate costs caused by LEC provision of video dialtone services and help prevent any local rate increases.

188. In declining to institute a Joint Board proceeding to address issues raised by the particular video dialtone proposals now pending before the Commission, we do not mean to imply that we will never revisit Part 36. Indeed, it appears likely that, as telecommunications networks and the marketplace evolve, the separations rules will require revision. In our judgment, however, it is too soon to begin proceedings to propose specific rule changes in this area. Video dialtone is but the first of what we expect to be an array of broadband services, and the current video dialtone proposals may or may not be representative of the manner in which those services will use network facilities, or of the jurisdictional mix of those services. Under these circumstances, scarce federal and state regulatory resources should not be expended to craft separations rules tailored to video dialtone.

189. We will take the following steps to help ensure that local telephone ratepayers are not being harmed by the advent of video dialtone -- a preeminent concern of state commenters. We direct the Common Carrier Bureau to develop a data collection program that will track the impact of video dialtone on both separations results and intrastate telephone rates. As part of this program, the Bureau will require all carriers offering video dialtone to submit detailed explanations of how they are applying the Part 36 rules, as well as Parts 32, 61, and 64, to video dialtone investments and expenses. The Bureau will report its results periodically so that this Commission and state regulators can determine when and if rule changes or other actions appear necessary.

190. We also will open an inquiry proceeding focusing on a matter of paramount concern to both federal and state regulators-- the implications for the jurisdictional separations process of the introduction of new technologies, including broadband technology, into local exchange carrier networks. This proceeding will provide

a forum for exploring the broader separations policy issues raised by continuing changes in network technology, of which video dialtone is but one example. The inquiry also will be a vehicle for updating, in light of actual video dialtone experience, the record created in the instant proceeding. We strongly encourage active state commission involvement in our inquiry and seek to establish a dialogue between state and federal regulators on these issues. The information we gather in this inquiry could serve as a basis for future rulemaking proposals as we examine our existing rules in light of the evolving nature of LEC networks.

191. State commissions, of course, bear the primary responsibility for ensuring that intrastate rates are reasonable. We emphasize that neither our decisions in this proceeding nor our actions on the various video dialtone Sec. 214 applications preempt the state commissions from disallowing from local telephone service rates any video dialtone-related costs that do not meet their own standards for inclusion in rates.

192. Finally, some parties contend that Section 410(c) of the Communications Act legally compels us to refer all separations issues, including use of common plant for video dialtone, to a Joint Board. Although Section 410(c) requires the Commission to refer separations issues to a Joint Board upon instituting a notice and comment rulemaking proceeding, we are not proposing to modify any separations rules here but are simply applying our existing rules. We conclude that we have the authority to apply existing jurisdictional separations rules during the initial phase of video dialtone service deployment. Our initial determinations regarding implementation of existing jurisdictional separations to video dialtone are, of course, subject to revision as we gain further experience with video dialtone.

e. Part 69 -- Access Charge-Cost Allocations and Rate Structure

Pleadings

193. Several petitioners and the Joint Petition request that the Commission determine the proper application of its access charge rules to video dialtone.[362] The Joint Petition states that a separate access charge category for video dialtone is needed so that video dialtone costs are not subsumed in access services provided to interexchange carriers.[363]

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362 See, e.g., DCPSC Petition at 5-6; Joint Petition at 10, 17, Hatfield Study at 24-25.

363 Joint Petition at 18; see also AT&T Jt. Petition Comments at 9-10; CompuServe Jt. Pet. Reply Comments at 5.

194. On the other hand, many LECs oppose changing Part 69 at this time.[364] For example, NYNEX asserts that video dialtone costs would not be subsumed in the access services provided to interexchange carriers because as a directly assigned interstate private line (wideband) service, the video dialtone costs would be assessed against end users of video and information providers.[365] SNET argues that the access charge regulations should not be changed to require video dialtone elements due to the wide variety of possible video dialtone systems and the lack of a video dialtone rate plan.[366] NTCA asserts that a piecemeal approach to access charge review will ignore universal service goals and deprive rural customers of the benefits of the information age.[367]

Discussion

195. We conclude that access to the basic video dialtone platform is a form of interstate access to the extent it is used to route interstate video programming to end users. We also conclude that a separate access charge category for video dialtone may be desirable to help ensure that interstate video dialtone costs are not recovered through charges for access services provided to interexchange carriers.

196. We decline, however, to prescribe a new rate element or to initiate a notice of proposed rulemaking at this time. We recognize that the access charge rules define rate elements established for traditional telephone facilities. Video dialtone may use both new and existing network facilities to deliver services in ways not contemplated at the time the Part 69 rules were written. Because video dialtone is a nascent service, though, and in light of the wide variety of possible video dialtone architectures LECs may employ, we find that there is a significant risk that any uniform rate structure we would prescribe now would fail to produce rate elements that logically match each carrier's video dialtone offering.

197. Instead, as the Commission has done in the past with other new services, we will require local telephone companies that wish to offer video dialtone services to file petitions for waiver of our Part 69 rules prior to the establishment of a permanent

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364 See, e.g., BellSouth Jt. Pet. Comments at 7, 10, 13-14; GTE Jt. Pet. Comments at 6; NYNEX Jt. Pet. Comments at 14-15.

365 NYNEX Jt. Pet. Comments at 14-15.

366 SNET Jt. Pet. Comments at 11.

367 NTCA Jt. Pet. Comments at 3-4.

video dialtone rate structure.[368] The waiver process, as an interim solution, will afford all interested parties an opportunity to participate, and challenge or support the rate structure proposed by the local telephone company. The waiver process will also provide a forum for reviewing the cost allocation proposals of ROR and optional incentive plan carriers.

198. We thus reject the contention that video dialtone is a special access service for which no Part 69 waiver would be required. NYNEX apparently has argued to treat video dialtone as special access because carriers will use dedicated facilities to offer these services.[369] Video dialtone, however, may share some characteristics with both switched and special access. While some video dialtone services will be offered over dedicated facilities, other video dialtone services may be offered over a joint transmission facility, an essential characteristic of switched access. Therefore, because Part 69 does not require assignment of this service to a particular service category, and because we believe the review of switched access waivers will best protect interstate ratepayers, we will treat video dialtone as a switched access service.[370]

199. We view this treatment of video dialtone service as a realistic and workable approach for the near term. Long term, it is our intention that these and other access charge reform issues

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368 See, e.g., Provision of Access for 800 Service, 4 FCC Rcd 2824, 2833, para. 74 (1989) (carriers were permitted to receive Part 69 waivers to establish separate unbundled subelements for 800 data base access and vertical features prior to the establishment of a permanent rate structure); Southwestern Bell Telephone Company, Petitions for Waiver of Part 69 of the Commission's Rules, 6 FCC Rcd 6095, 6098, paras. 20-21 (1991) (carriers were permitted to receive Part 69 waivers to offer Line Identification Database (LIDB) service prior to the establishment of a permanent rate structure).

369 NYNEX Jt. Pet. Comments at 14-15. In a separate proceeding, Bell Atlantic also has characterized its video dialtone service as a special access service. See Bell Atlantic's ONA Plan Filing Comments at 3-4 (filed April 7, 1994).

370 To date only one video dialtone tariff has become effective. See Rochester Telephone Corp., DA 94-734 (Tar. Div. released June 30, 1994). That tariff is for a video dialtone trial of very limited scope and duration. See Rochester Telephone Corp., 9 FCC Rcd 2285 (Dom. Fac. Div. 1994).

will be addressed in future proceedings that address our Part 69 rules.[371]

f. Part 61 -- Price Cap Treatment

Pleadings

200. Several parties request that the Commission establish a separate price cap basket for video dialtone services.[372] The Joint Petition argues that using existing baskets invites cross-subsidization by giving carriers the flexibility to reduce charges for video dialtone below costs and recover the shortfall by raising rates for other regulated services.[373] The Joint Petition also argues that basket-by-basket earnings calculations and sharing should be required to prevent upward rate adjustments in other baskets.[374] AT&T asserts that, by aligning costs with the cost-causing services, the Commission will increase the likelihood of fair competition between LECs and other broadband service providers.[375]

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371 Several petitions are before the Commission seeking waivers of, or major changes in, the access charge rules. See, e.g., Rochester Telephone Corporation's Petition for Waiver, DA 93-687 (filed May 20, 1993); Ameritech Operating Companies, BellSouth Telecommunications, Inc., and Southwestern Bell Telephone Company Petitions for Waiver of Part 69 Access Rules, DA 93-707 (filed June 11, 1993); National Association of Regulatory Utility Commissioners' Petition for Notice of Inquiry Addressing Access Issues, DA 93-847 (filed June 25, 1993); NYNEX's Petition for Waiver of Parts 61 and 69, DA 93-1537 (filed December 15, 1993); see also Federal Perspectives on Access Charge Reform, FCC Staff Analysis (April 30, 1993).

We agree with NTCA that universal service issues should not be ignored, and we are aware that the addition of broadband loop facilities may have an immediate impact on the Universal Service Fund. Issues relating to the Universal Service Fund are currently under consideration by the Commission. See Amendment of Part 36 of The Commission's Rules and Establishment of a Joint Board, Notice of Inquiry, CC Docket No. 80-286 (August 30, 1994).

372 See, e.g., Joint Petition at 10, 17-18, Hatfield Study at 24-27; AT&T Jt. Pet. Comments at 9-10.

373 Joint Petition at 18; see CompuServe Jt. Pet. Reply Comments at 5; AT&T Jt. Pet. Comments at 9-10.

374 Joint Petition, Hatfield Study at 27.

375 AT&T Jt. Pet. Comments at 9-10.

201. In addition, FCTA and several other parties argue that video dialtone services should be treated as a "new service" subject to price cap regulation.[376] Moreover, FCTA and others contend that the Commission should strengthen its tariff review process for video dialtone service.[377] They contend that the Commission should establish a formal LEC tariff plan with express requirements for cost calculations and revenue projections in order to ensure the proper pricing of video dialtone service.[378] For example, ETI argues that cost support terms must be more clearly defined and that carriers should file additional cost support for their video transport services.[379] FCTA requests that the FCC clarify that LECs, whether operating under price caps or not, must submit their interstate video transport tariffs to a tariff review process that includes review for cross-subsidy, cost allocation, and separations issues.[380]

202. The LECs argue that current price cap rules will adequately prevent LEC abuses.[381] BellSouth asserts that video dialtone service is just another transport service and will fit comfortably into existing price cap baskets depending on how the service is offered.[382] Bell Atlantic argues that the existing price cap rules already include a separate service category for video services in the special access basket.[383] Similarly, several LECs oppose basket-by-basket earnings calculations and sharing. They argue that no new evidence has been presented since the Commission

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376 See, e.g., FCTA Petition at 6; NJCTA Jt. Pet. Comments at 9, 12-13 & n.22; GTE Comments at 7.

377 See, e.g., FCTA Petition at 3-7, 11-12, ETI Study at 1 (attached to the FCTA Petition); PaOCA Comments at 10; CompuServe Jt. Pet. Reply Comments at 5.

378 See, e.g., CompuServe Jt. Pet. Reply Comments at 5; NJCTA Jt. Pet. Comments at 2.

379 ETI Study at 4-10.

380 FCTA Petition at 3-7, 11-12; see PaOCA Comments at 10.

381 See, e.g., GTE Jt. Pet. Comments at 5-6; NYNEX Jt. Pet. Comments at 14-15; Bell Atlantic Jt. Pet. Comments at 6-7.

382 BellSouth Jt. Pet. Comments at 14.

383 Bell Atlantic Jt. Pet. Comments at 7.

last rejected this proposition and held that sharing would apply on an overall interstate basis.[384]

203. US West maintains that, because local telephone companies do not have market power in the provision of video services to the home, they cannot control prices, and thus, price regulation is unnecessary.[385] Assuming the Commission treats video dialtone as a competitive service, then US West contends that video dialtone could not have an impact on the prices of any other US West service subject to price cap regulation.[386] In addition, BellSouth asserts that the Commission can remove incentives to cross-subsidization by adopting a pure price cap regulatory structure as it has done with cable companies and AT&T.[387]

204. Further, several LECs argue that the existing tariffing process adequately protects consumers. They argue that the current tariff review process requires carriers to justify their costs before they offer video dialtone service and that the process is designed to ensure that consumers benefit from reasonable rates while protecting against predatory pricing of competitive services.[388] GTE opposes altering the tariff review process and states that tariff review plans are not usually established for individual service filings. GTE also states that not all LECs are required to submit interstate video services tariffs to the tariff review plan.[389]

Discussion

205. We conclude that price cap local telephone companies should continue to be subject to the existing price cap rules for their provision of video dialtone services. Contrary to US West's argument that local telephone companies are nondominant in the video marketplace, carriers offering video dialtone service maintain control over an essential bottleneck facility, i.e., the basic platform, and consequently retain control over the price of access to that platform. Until actual facilities-based competition

384 See, e.g., Ameritech Jt. Pet. Comments at 9-10; BellSouth Jt. Pet. Comments at 10.

385 US West Jt. Pet. Comments at 4-6.

386 US West Jt. Pet. Comments at 10.

387 BellSouth Jt. Pet. Comments at 13-14.

388 See, e.g., Bell Atlantic Jt. Pet. Comments at 6-7; NYNEX Jt. Pet. Comments at 14-15; GTE Jt. Pet. Comments at 5-6.

389 GTE Reply Comments at 2 n.5.

gives video service providers access to several outlets for the distribution of their services, regulation of the common carrier platform is necessary to ensure that rates charged for access to the basic platform are just and reasonable.

206. We also conclude that video dialtone service is a "new service" under our price cap rules. New services are services that "add to the range of options already available to customers."[390] In contrast to restructured services, which involve the rearrangement of existing services, video dialtone adds to the range of options for customers because multiple video programmers will have access to a basic common carrier platform for the first time. Video dialtone thus differs from a carrier's provision of channel service or other video transport services.

207. Local telephone companies will be required to make a cost-based showing under the price caps new services test to establish initial video dialtone prices. As explained below, this test, as applied in established tariff review processes, provides an adequate vehicle for full consideration of the reasonableness of proposed video dialtone rates. We therefore find it unnecessary to initiate a rulemaking to develop new, video dialtone-specific tariffing requirements. We also conclude that, given our current dearth of experience with video dialtone tariffs, it would be both premature and counterproductive to attempt to promulgate such rules at this time. The first few tariff proceedings will provide a far more concrete and realistic factual context for future decision making than would be developed in a general rulemaking proceeding.

208. Some parties to this proceeding have requested clarification of the manner in which the price caps new services test will allow for review of cross-subsidy and cost allocation issues. We therefore review below the development and application of the new services test.

209. Evolution of the LEC Price Caps New Services Test. When a price cap carrier introduces a new service, the proposed rate must be reviewed, and historical demand established, before the service can be incorporated into the price cap formulas. When the Commission adopted price caps for AT&T, it established a requirement that new price cap service tariffs be filed on 45 days notice, with supporting information sufficient to demonstrate compliance with a "net revenue test" as a floor. New services were to be included in the first annual price cap tariff filing after

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390 Policy and Rules Concerning Rates for Dominant Carriers, 5 FCC Rcd 6786, 6824-25, para. 314 (1990), recon., 6 FCC Rcd 2637 (1991), aff'd, National Rural Telecom Assoc. v. FCC, 988 F.2d 174 (1993).

the completion of the base year in which the new service becomes effective.[391]

210. The net revenue test required a showing that the service would increase net revenues for price capped services within a relatively short period of time. This test, originally developed for use in reviewing AT&T's optional calling plan rates,[392] provided assurance that the service would cover its incremental costs, and that the rate was, therefore, not predatory.[393] The Commission explained the reasons for using such a test for new, competitive services as follows:

> In the Optional Calling Plan Order, we found that fully distributed costing was not necessary to prevent cross-subsidization of a new, competitive optional calling plan by less competitive switched services. We recognized that a price lower than FDC, but higher than marginal cost, would not only recover the costs caused by the service, but contribute to overhead as well. We further found that, while FDC would definitively rule out predation, it would do so at an unwarranted cost. Depending on the degree and nature of competition, FDC would either preclude offering of the new service altogether, or erect an inefficient price umbrella over less efficient competitors. Based on these conclusions, we decided that an FDC standard should not be used as a means of determining the reasonableness of rates for new optional MTS calling plans. *We concluded that we should use a standard that more closely approximates marginal or incremental cost. Because marginal costs are essentially theoretical, however, and cannot be generated through conventional accounting methods, we decided to employ a net revenue test as a proxy for a marginal cost standard.*
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> We now conclude that the same considerations that led us to reject FDC as a standard for optional calling plans apply to all new AT&T services under price caps. *Consumer welfare will be increased by the introduction of a new service if that service produces revenues that*

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391 Policy and Rules Concerning Rates for Dominant Carriers, 4 FCC Rcd 2873, 3123-4, para. 520 (1989) (AT&T Price Cap Order).

392 See Guidelines for Dominant Carriers' MTS Rates and Rate Structure Plans, 59 R.R. 2d 70 (1985) (Optional Calling Plan Order.)

393 AT&T Price Cap Order, 4 FCC Rcd at 3128, para. 531.

cover at least the incremental costs of providing the service.[394]

211. The AT&T price cap plan thus placed an incremental cost floor under new service prices, but relied on competition to provide the ceiling. Initially, the Commission chose this same approach for the price cap LECs.[395] On reconsideration, however, the Commission determined that a regulatory price ceiling also was required to protect LEC ratepayers against unreasonably high rates.[396] On an interim basis, the Commission directed LECs to support new service filings with traditional fully distributed cost showings, which the Commission described as follows:

> LECs that have introduced new service offerings in the past have provided cost support identifying the direct costs of the new service as well as the associated overheads. LECs typically submit engineering studies, time and wage studies, or other cost accounting studies in support of the new offering. The purpose of these studies is to identify the direct costs of providing the new service, absent overheads. Once direct costs are identified, the LECs add overhead costs in order to determine the overall cost of the new service.[397]

The Commission continued to use the net revenue test floor as a safeguard against predatory pricing.[398] It deferred adoption of final LEC new services rules to the then-pending Part 69/ONA proceeding.[399]

212. In the Part 69/ONA Order the Commission kept the net revenue test as a price floor but replaced the traditional FDC price ceiling with a more flexible cost-based test. The new test retained the "direct cost" component of the traditional approach but afforded the LECs greater leeway in the application of overhead loadings:

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394 Id. at 3124, paras. 521-2 (*emphasis added*).

395 LEC Price Cap Order, 5 FCC Rcd at 6825, paras. 319-21.

396 See LEC Price Cap Reconsideration Order, 6 FCC Rcd at 2694-5, paras 126-129.

397 Id. at 2695, para. 128

398 Id. para. 127.

399 See Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, Notice of Proposed Rulemaking, 4 FCC Rcd 3983 (1989).

Under our approach, a LEC introducing new services will be required to submit its engineering cost studies, time and wage studies, or other cost accounting studies to identify the direct costs of providing the new service, absent overheads, and must also satisfy the net revenue test. LECs may develop their own costing methodologies, but they must use the same costing methodology for all related services. ... Once the direct costs have been identified, LECs will add an appropriate level of overhead costs to derive the overall price of the new service. To provide the flexibility needed to achieve efficient pricing, we are not mandating uniform loading, but BOCS will be expected to justify the loading methodology they select as well as any deviations from it.[400]

213. On reconsideration, the Commission eliminated the net revenue test for LECs on the grounds that the cost showings necessary to demonstrate compliance with the price ceiling would also provide sufficient data to establish a price floor:

As discussed earlier, the net revenue test was initially incorporated into the LEC price cap new services test as a way to ensure that LECs do not engage in predatory pricing. The subsequent requirement that LECs submit cost support for new services, including direct costs and overhead loadings, however, rendered the net revenue test superfluous as a check on predatory pricing. Once a LEC is required to submit information on direct costs, the requirements that price exceed direct costs will prevent predatory pricing.[401]

The Commission's substantive standard for determining whether new service rates are unreasonably low was not changed: a price is unreasonably low if it is predatory; a predatory price is one that does not recover the incremental costs of providing a service. Conversely, a rate that recovers all of the incremental costs of a new service is not predatory.

214. Application of the LEC Price Cap New Services Test. We decline at this time to amend the new services test specifically for video dialtone services. The Commission currently has

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400 Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, 6 FCC Rcd 4524 at 4531 (1991). LECs were also permitted to seek a higher rate of return, or "risk premium", for new services that they deem especially risky. Id.

401 7 FCC Rcd at 5237.